STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION On Its Own Motion	)	
Revision of 83 Ill. Adm. Code 280.	)	Docket No. 06-0703

REPLY BRIEF OF ILLINOIS-AMERICAN WATER COMPANY

Albert D. Sturtevant
Anne M. Zehr
CARPENTER LIPPS & LELAND LLP
22 West Washington Street, Suite 1500
Chicago, Illinois 60602
Telephone: (312) 854-8032
Facsimile: (614) 365-9145
sturtevant@carpenterlipps.com
zehr@carpenterlipps.com

Dated: October 7, 2011

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I. INTRODUCTION

Illinois-American Water Company ("IAWC" or the "Company") reiterates that it appreciates Staff's, and the other Intervenors', continuing efforts to fashion a revised Part 280 which protects both the individual interests of, and the relationship between, Illinois utility consumers and the utilities that serve them. Concerns remain for IAWC, however, regarding certain aspects of Staff's Proposed Rule. The initial briefs of parties advocating on behalf of Illinois consumers in this proceeding (the "Consumer Advocates")[1], in particular, have offered little to dispel the concerns raised by IAWC that certain of the proposed revisions to Part 280 made by Staff and the Consumer Advocates may result in increased utility costs, ultimately borne by Illinois consumers, which are not proportionate to the benefits intended to be conferred by those revisions. Although the Consumer Advocates make extensive arguments about what impacts Staff's Proposed Rule would have on consumers, they overlook one particularly significant impact: the impact on Illinois consumers' utility rates that could result from potential increased utility costs incurred to meet the new requirements of a revised Part 280. In addition, as addressed in IAWC's Initial Brief, certain aspects of Staff's proposed rewrite, while suitable for electric and gas utilities, are not appropriately applied to water and sewer utilities—most notably, Staff's proposed revisions specific to "low income customers."

II. IAWC'S PROPOSED REVISIONS TO STAFF'S RULE

As in its Initial Brief, IAWC's responses to the Initial Briefs of Staff, the Consumer Advocates, and the other parties intervening in this proceeding as set forth in this Reply Brief refer to the most recent version of Staff's proposed revisions to Part 280, ICC Staff Exhibit 3.0

[1] The Consumer Advocates are AARP; the Citizens Utility Board, the City of Chicago and the People of the State of Illinois, collectively, the Government and Consumer Intervenors ("GCI"); and the South Austin Coalition for Community Council and Community Action for Fair Utility Practice, or Low Income Residential Consumers ("LIRC").

(Agnew & Howard Sur.), Attachment A (filed March 17, 2011) ("Staff's Proposed Rule"). Where appropriate, references also are made to the redlined draft of Staff's proposed rule on rebuttal which contains specific language reflecting IAWC's proposed changes, IAWC Ex. FLR-3.0 (Ruckman Sur.), Attachment FLR-3.1 ("FLR-3.1," Exhibit A to IAWC's Initial Brief), and to the parties' Joint Pretrial Outline ("JPTO," filed by Staff on June 8, 2011), which contains certain additional language proposed by IAWC as well as the other parties to this proceeding. The organization of this Reply Brief follows sequentially the subsections of Staff's Proposed Rule warranting discussion on reply and responds to Staff and the Consumer Advocates in alphabetical order, as ordered by the presiding Administrative Law Judge ("ALJ"). Finally, IAWC initially responds to arguments made by the Consumer Advocates in their Initial Briefs which are not related to a specific section of Staff's Proposed Rule.

III. ARGUMENT

GENERAL RESPONSE TO CONSUMER ADVOCATES

Response to GCI

In the Introduction to their Initial Brief, GCI present several arguments not in relation to any specific section of Staff's Proposed Rule. Although such arguments were presented outside the required brief format established by the ALJ, they nevertheless warrant response.

First, GCI claim the testimony submitted in this proceeding on GCI's behalf "offered reasonable and necessary modifications to Staff's proposed rule to ensure that utility service is offered in a fair and affordable manner." (GCI Corr. Initial Br., p. 2.) IAWC disagrees. As discussed more fully below, in most cases, GCI's proposals ignore the increased costs which will be borne by all ratepayers, often for the (alleged) benefit of a few. (*See, e.g., infra* Sections 280.05, 280.10 and 280.15.)

GCI also accuse the utilities of responding to Staff's and GCI's proposals in this proceeding in a manner that "largely amounted to a subordination of customer interest to the utility convenience and financial self-interest." (GCI Corr. Initial Br., p. 2.) Again, that is not the case. Utilities have an obligation to provide adequate and reliable utility service in a manner which is least-cost, consistent with service obligations. 220 ILCS 5/8-401. Considerations of efficiency and financial practicality are paramount to the provision of such service. It is the ratepayer that ultimately benefits from those considerations. In making this statement, GCI appear to overlook "customer interest" in the level of their rates.

Next, GCI direct the Commission's attention, "as it ponders the re-write of Part 280," to recent Illinois law which permits utilities to recover uncollectibles through a rider. (GCI Corr. Initial Br., p. 3 (*referencing, but not citing,* 220 ILCS 5/16-111.8).) In light of this law, GCI contend "utility arguments for draconian debt collection powers to protect customers from higher uncollectible expense should be received with skepticism." (*Id*.) The uncollectible rider statute is inapplicable to water and sewer utilities. GCI admits this, but fails to mention it here. (*See* GCI Corr. Initial Br., p. 93; Hearing Tr., p. 294:8-15 (GCI witness Ms. Alexander acknowledging Illinois' uncollectibles riders law does not apply to water utilities).)

GCI also argue that changes to Part 280 should be based on an examination of the "nation's best practices." (GCI Corr. Initial Br., p. 3.) However, although in their Initial Brief and in the testimony they filed in this proceeding, GCI discuss at length other states' public utility commissions' regulations, and argue Illinois' Part 280 should be revised to accord with those regulations, GCI fail to present evidence demonstrating it would be appropriate or practical to apply such regulations in Illinois. IAWC is not aware of any study submitted by GCI of the applicability of another state's regulatory scheme to Illinois, or of the comparability of utility

operations and services between Illinois and, say, Missouri or Ohio, two states whose regulations GCI references. While a survey of the "nation's best practices" (and, that term is relative, of course) may be useful in limited circumstances, there is no record evidence in this proceeding that the regulations from other states should form the basis for any revision to Illinois' Part 280.

Finally, GCI contend there is a lack of evidentiary support for utility cost estimates in connection with implementation of the revised rule and a lack of basis for utility conclusions that such costs are burdensome. (*Id*., p. 4.) Again, IAWC disagrees. As discussed more fully below, (*see, e.g., infra* Section 280.15), GCI ignore in their Initial Brief substantial record evidence supporting the increased costs that will be borne by the utilities and, in turn, their customers, as a result of certain revisions to Part 280. Not surprisingly then, GCI conclude, "[u]tilities should seek recovery of any incremental costs associated with implementing rule changes in rate cases." (*Id*.) The increased rates customers may experience appear inconsequential to GCI in this proceeding.

Response to LIRC

Like GCI, LIRC sets forth general argument in the Introduction to its Initial Brief which warrants response. Specifically, LIRC argues, because of the low-income customer protections interspersed throughout Staff's Proposed Rule, "[i]t is *likely* that payments by low income residential customers will increase under the more rational system LIRC proposed and this also holds true for Staff's proposal." (LIRC Initial Br., p. 2 (emphasis added).) LIRC cites no evidence in support of that assertion. Indeed, IAWC is unaware of any quantifiable evidence submitted by LIRC or any other party to this proceeding which demonstrates payments by low income customers will "likely" increase as a result of the low income customer provisions proposed by Staff and supported by the Consumer Advocates. For this and other reasons

discussed more fully below, IAWC proposes deletion and/or modification of those provisions with respect to water and sewer utilities. (*See infra* Sections 280.20, "Low Income Customer," 280.45, 280.65 and 280.125.)

SUBPART A: GENERAL

Section 280.05 Policy

As explained in IAWC's Initial Brief, language in Staff's proposed "policy" section permitting revised Part 280 to take precedence over utility tariffs which have been reviewed and approved by the Commission as a waiver or exemption should be rejected as not only impractical and burdensome, but also inconsistent with well-established Illinois law. (IAWC Initial Br., pp. 3-10.) The arguments made in Staff and GCI's Initial Briefs in support of that Section fail to counter either concern. Section 280.05 should not be enacted as presently drafted.

Response to Staff

Staff argues the proposed "policy" section is necessary "to outline the goals of the rule and underscore the fact that the rule shall take precedence over conflicting tariffs that have not been approved by the Commission as a waiver or exemption." (ICC Staff Initial Br., pp. 2, 3 (reiterating Staff's intent to "underscore the hierarchy of rule over tariff").) Staff ignores, however, both well-established Illinois law governing the relationship between utility and customer and the significant practical difficulties this creates. As discussed in IAWC's Initial Brief, this "precedence" language would allow Part 280 to supersede not only all present tariff provisions, but all future ones as well (and Staff acknowledges the rule is "'forward looking'"). (IAWC Initial Br., pp. 4-5; ICC Staff Initial Br., p. 4.) A practical issue would arise regarding just what constitutes an "inconsistent" tariff, and whether "inconsistency" means less favorable, or simply different. (IAWC Initial Br., p. 5.) Notably, GCI, proponents of the "precedence"

language, believe that language should apply both to explicit conflicts between Part 280 and a tariff and *implicit* ones. (*See* IAWC Initial Br., pp. 5-6 (*citing* testimony of GCI witness Ms. Marcelin-Reme to that end).) The language could thus require utilities to seek blanket waivers from Part 280 with respect to their current and future tariffs. As stated in IAWC's Initial Brief, revised Part 280 should not so limitlessly burden the resources of the utilities, the Commission and its Staff. Further, as discussed in response to GCI, utilities Ameren Illinois Company ("Ameren Illinois"), MidAmerican Energy Co. ("MEC") and Nicor Gas Company ("Nicor") also oppose the "precedence" language. That language should be deleted.

In proposing that the "precedence" language in the GCI-proposed, Staff-adopted "policy" section be deleted, IAWC also proposed deletion of language which would require the revised Part 280 to "be viewed as the minimum standards applicable to gas, electric, water and sanitary sewer utilities." (IAWC Ex. FLR-3.1, p. 3; JPTO, p. 5.) As stated in its Initial Brief, IAWC does not dispute that the Commission has the authority to establish minimum requirements for utility service. (IAWC Initial Br., p. 4.) Upon further review of proposed Section 280.05 and the parties' Initial Briefs, IAWC therefore believes it is appropriate to retain the "minimum standards" clause of the sentence in the proposed policy Section containing the "precedence" language. However, because the proposed "precedence" language is contrary to Illinois law and unworkable, that clause should be deleted. Under IAWC's modified proposal, proposed Section 280.05 would read:

> The purpose of this rule is to ensure that essential utility services are provided to and maintained for the People of the State of Illinois, and to establish fair and equitable procedures within the scope of this Part, that take into account the duty of the utility, customer, applicant and occupant to demonstrate good faith and fair dealing. The policies and procedures outlined in this rule ~~shall take precedence over any inconsistent utility tariff, unless the conflicting tariff provision has been specifically approved by the~~

> ~~Commission as a waiver or exemption from this rule, and~~ shall be viewed as the minimum standards applicable to gas, electric, water and sanitary sewer utilities. This Part shall not supersede tariff provisions which have been reviewed and approved by the Commission. Utilities that are subject to these rules shall have the ability to expand or supplement the customer rights guaranteed by these provisions as long as those policies are applied in a nondiscriminatory manner.

IAWC notes Nicor has proposed similar revisions to Section 280.05. (*See* JPTO, p. 4.) IAWC would alternatively accept the revisions proposed by Nicor.

Response to GCI

In support of their proposed "policy" section, GCI claim that language "will guide Staff, the Commission, utilities, and consumers in interpreting the rules." (GCI Corr. Initial Br., p. 4.) GCI argue the "precedence" language is necessary because it will establish Part 280 as the single source which consumers consult for an understanding of their utility service. (*Id*., p. 8.) GCI claim this thus allows customers to examine controlling law without the need to access tariff sheets. (*Id*.) (AARP makes the same argument in support of the "precedence" language of proposed Section 280.05. (AARP Initial Br., pp. 3-4.)) Yet, the opposite is true. As explained in IAWC's Initial Brief, under well-established Illinois law, a tariff duly filed with and approved by the Commission governs the relationship between the utility and its customers, and it has the force and effect of a statute. As such, it supersedes any administrative enactment. (IAWC Initial Br., pp. 7-8 (*citing* authority).) The GCI-proposed, Staff-supported "precedence" language is contrary to that well-established principle.

Particularly, with respect to tariff changes approved by the Commission prospectively, once the revised Part 280 is enacted, such duly approved tariff provisions must control, irrespective of whether they are expressly labeled as "waivers" or otherwise. Rather than "guid[ing] Staff, the Commission, utilities, and consumers in interpreting the rules," (GCI Corr.

Initial Br., p. 4), moreover, Staff's Proposed Rule may cause confusion as to which controls—the tariff or the rule. IAWC reiterates that having the tariff control is preferable, as the rules governing the utility-customer relationship will be clear.

GCI also defend the statement of precedence as "important" because Staff acknowledges it as an "accepted concept." (GCI Corr. Initial Br., p. 7.) However, as noted in IAWC's Initial Brief, it is telling that this "accepted concept" has not before been incorporated into the Commission's rules. (IAWC Initial Br., p. 9.) Perhaps this is because, as stated above and as addressed more fully in IAWC's Initial Brief (*id*., pp. 7-8), it is well-established that Commission-approved tariffs have the force and effect of statutes. They cannot be trumped by inconsistent administrative regulations. As such, it is not surprising language contrary to this principal is absent from the Commission's current written rules.

In response to Nicor's concern the proposed "precedence" language will result in constant litigation to determine whether a conflict exists between Part 280 and a tariff provision, GCI simply state, "as with any rule of general applicability, a specific set of facts could always arise where there could be a dispute about whether a rule applies, or in this case, whether a conflict exists between the rule and a tariff." (GCI Corr. Initial Br., p. 8.) They claim this is not a sound reason to reject the policy language. (*Id*., p. 9.) This response ignores that there *is* a simple solution—consistent with Illinois law, provide that the tariff controls. But, GCI would rather burden the utilities, the Commission and its Staff: "If a clear conflict were to arise, *which would necessarily involve a case-by-case analysis*, this policy language makes clear that the utility must affirmatively seek a waiver from Part 280." (*Id*. (emphasis added). *See also* Hearing Tr., pp. 695:19-696:13 (GCI witness Ms. Marcelin-Reme testifying such a burden on the Commission and Illinois' utilities is appropriate).)

GCI's "precedence" language in its policy statement is opposed by Ameren Illinois, MEC and Nicor. As Ameren Illinois argues, the "precedence" language proposed by GCI and accepted by Staff is problematic for two reasons. First, like IAWC, Ameren notes that language creates an indeterminate conflict in the law because tariffs approved by the Commission have the force of law. (Ameren Initial Br., p. 7.) Thus, Ameren aptly points out that a tariff passed post-Commission approval of Part 280 necessarily is controlling. (*Id*.) Ameren also recognizes that such "precedence" language will create unnecessary confusion and ambiguity. IAWC agrees that "[a] tariff approved by the Commission that addresses the same topic or matter in a specific way should control in terms of the Commission's expectations." (*Id*.)

MEC also takes issue with the "precedence" language in proposed Section 280.05, and contends that language elevates the Section beyond a general policy section. (MEC Initial Br., p. 3.) As MEC explains in its Initial Brief, the purpose of a policy section is to provide prefatory language, and not to serve as an operative part of the rule. (*Id*., p. 4 (*citing* authority).) GCI's proposed "precedence" language, however, sets forth a specific legal requirement to be applied in the event Part 280 and a tariff conflict. (*Id*.) Thus, MEC contends, proposed Section 280.05 is not the proper place to establish the "hierarchy" Staff desires. (*Id*.) Rather, according to MEC, the proper place for establishing which controls—a tariff or Part 280—is during the Commission's tariff review process pursuant to Section 9-201 of the Public Utilities Act (the "Act"), 220 ILCS 5/9-201. (*Id*., pp. 4-5.) MEC's point is well-taken and IAWC agrees with it.

Finally, Nicor also proposes deleting the "precedence language" in proposed Section 280.05. (Nicor Initial Br., p. 7.) Nicor agrees with IAWC that that language is directly contrary to established Illinois law, and it correctly points out that Commission-approved tariffs have the force and effect of a statute. (*Id*., pp. 8, 9.) As Nicor points out, statutory declarations of policy,

findings and intent are prefatory only, and they can have no substantive or positive legal force. (*Id*., p. 8 (*citing* authority).) As such, the proposed "policy" section cannot "'confer powers or determine rights.'" (*Id*., (*quoting* authority).) Despite this, GCI's proposed language permits a general statement of policy to control over specific provisions in a utility's tariff. (*Id*., p. 9.) That is directly contrary to Illinois law. As Nicor further argues, the Commission holds only those powers conferred upon it by the Act. Those powers do not include prescribing rules of statutory construction. (*Id*.) Thus, GCI's proposal also runs contrary to the Commission's statutorily established powers. (*Id*., pp. 9-10.) IAWC agrees with Nicor in this regard. In sum, the way to resolve an inconsistency between Part 280 and a tariff is by setting forth the rule's requirements more clearly, and not by adding "precedence" language which is itself contrary to law. (*Id*.) IAWC therefore endorses the arguments Nicor makes in opposition to GCI's proposed Section 280.05.

Section 280.10 Exemptions

Response to Staff

Section 280.10 of Staff's Proposed Rule sets forth the requirements a utility must fulfill in order to obtain modification of or an exemption from Part 280. (JPTO, p. 6.) As discussed below, GCI propose adding language to this Section which would require annual documentation, evaluation, reporting, and Commission approval of any modifications or exemptions to the Rule granted by the Commission. (*Id*., pp. 7-8.) In its Initial Brief, in rejecting GCI's proposal, Staff aptly notes GCI have failed to explain how, procedurally, an approved exception to Part 280 subsequently would be brought before the Commission for annual re-approval. (ICC Staff Initial Br., p. 6.) Further, Staff acknowledges "[t]he Commission has vast experience in determining the public interest and should not be handcuffed by an unexplained timeline requirement." (*Id*.)

IAWC agrees with Staff's reasoning in this regard. As further explained below, GCI's proposed revisions to Section 280.10 should be rejected.

Response to GCI

As stated, GCI propose to revise Section 280.10 to require that "[a]ny approved alternative approach to a specific provision in [Part 280] shall be documented evaluated, reported to, and approved by, the Commission annually." (JPTO, p. 8; GCI Ex. 5.1, pp. 3-4.) As recognized by Staff, despite the opportunity to do so in briefing, GCI fail to set forth how their proposed revision would work procedurally. In the absence of any explanation from GCI, IAWC can only assume GCI intend to require utilities to annually file with the Commission, and the Commission initiate a docketed proceeding, for the purpose of re-documenting, reevaluating, re-reporting and re-approving exemptions to Part 280. The resulting burden on the utilities, the Commission and its Staff is undeniable.

Rather than explaining the mechanics of their proposal, GCI instead claim in their Initial Brief that such revision will ensure Part 280 is the primary source which customers use to determine those rights and responsibilities. (GCI Corr. Initial Br., p. 12.) At the same time, GCI *concede* a potential result of their proposal would be that consumers would be required to scour the Commission's files, presumably on e-Docket, to determine whether a utility has complied with the annual requirement that an exemption be re-approved by the Commission:

> It is not clear where customers or consumer advocates would look to determine whether a particular utility has been granted a waiver to a particular provision of Part 280. *Perhaps they would have to scour Commission filings to make that determination*. *Regardless, the process need not and should not be onerous on consumer*s. Customers and consumer advocates should not have to guess whether a waiver has been granted.

(*Id*. (emphasis added).) Thus, in defending their proposal, GCI set forth an argument that

contradicts itself. GCI admit they have not considered the practical implications of their proposal. IAWC submits, given that GCI's proposal requires *annual* reevaluation, the practical implications are that the resulting docketed proceedings would be numerous. IAWC fails to see how "scour[ing] [those numerous] Commission filings" to determine if an exemption is still in effect would not "be onerous on consumers." (*Id.*) Notably, absent the GCI-proposed annual filing requirement, only one source need be consulted to determine whether an exemption has been granted—the utility's Commission-approved tariff.

In addition to the burden and confusion GCI's proposed annual re-approval requirement would cause customers, let alone the obvious burden it would place on the Commission and its Staff, GCI's recommendation ignores the cost implications of their proposal. That is, annual filings by utilities to seek Commission re-approval of an already approved exemption could be expected to require increased utility time and resources. The resulting increased costs would be borne by all ratepayers. GCI does not dispute this. (*See* Hearing Tr., p. 296:7-16 (GCI witness Ms. Alexander acknowledging the incremental costs resulting from implementation of revised Part 280 will be borne by all utility ratepayers).)

In sum, GCI's claim their recommendation "is a common-sense protection that should be adopted," (GCI Corr. Initial Br., pp. 12-13), is anything but true. Their call for exemptions from Part 280 to be "documented evaluated, reported to, and approved by, the Commission annually" is impractical, burdensome and expensive not only for Illinois utilities, the Commission and the Commission's Staff, but also for the body of ratepayers those entities serve.

New Section 280.15 Compliance

Response to Staff

In response to the two-year compliance provision proposed by Nicor Gas, (JPTO, p. 8;

Nicor Gas Ex. 4.0 (Grove Reb.), pp. 16:357-17:379), Staff reiterates that it "agrees that it may take some time to implement some of the changes and additional requirements of the draft rule . . . ." (ICC Staff Initial Br., p. 7. *See also* Hearing Tr., pp. 792:4-8; 792:20-793:10.) Staff does not dispute utilities will be unable to immediately comply in all respects with the revised Part 280 once enacted. Thus, it is appropriate to adopt a provision setting forth a reasonable compliance period. Moreover, with respect to that compliance period, Staff again concedes, as it did at the hearing of this matter, that it "lacks IT expertise and is uncertain as to how long that timeline should be." (ICC Staff Initial Br., p. 7. *See also* Hearing Tr., pp. 791:21-792:1.) Given this, the Commission should defer to the expertise of the witnesses who submitted sworn testimony on behalf of the utilities in this proceeding and who are intimately familiar with each utility's IT systems and business processes. Those witnesses estimate it will take approximately two years for the utilities to come into full compliance with the new rule. (*See, e.g.*, IAWC Initial Br., pp. 11-13; IAWC Ex. FLR-1.0 (CORR.), pp. 3:69-4:75, 9:198-201, 10:219-22, 13:286-90 and 14:301-10 (noting substantial modifications to IAWC's current IT customer information and billing systems required by Staff's Proposed Rule; IAWC Ex. FLR-2.0, p. 5:104-09 (noting same); Nicor Gas Ex. 1.0 (Lukowicz Dir.), pp. 4:65-71, 9:181-88 (noting modifications necessary to utility's IT systems and estimating two year compliance period); Nicor Gas Ex. 4.0 (Grove Reb.), pp. 16:366-17:379 (noting same).) Proposed Section 280.15 should be adopted.

Response to GCI

GCI concede "instantaneous compliance may not be possible for all utilities and all provisions of a revised Part 280." (GCI Corr. Initial Br., p. 17.) Nevertheless, for a number of reasons, GCI oppose permitting utilities two years to modify their existing IT systems and

business processes to meet the requirements of the revised Part 280. (*See generally* GCI Corr. Initial Br., pp. 13-20.) Most notably, they argue the record does not support a two-year exemption. (*Id*., p. 15.) Referring to the instant proceeding, they boldly assert, "[a]fter a process that has consumed more than six years, further delay requires compelling justification. *Such support for delay is absent from this record*." (*Id*., p. 16 (emphasis added).) That is wrong. The utilities that support the two-year compliance provision submitted evidence (including evidence from IT professionals) that, until the particulars of revised Part 280 are known, they cannot begin in earnest modifications to their IT systems and business processes. Further, such modifications are expected to take up to two years to complete. (*See, e.g.*, Hearing Tr., pp. 560:4-6, 560:24-561:11 (IAWC witness Mr. Ruckman testifying IAWC's existing systems will have a shelf life of no more than two years post implementation of the revised rule, and, although the final rule is unknown, the Company is looking into system modifications); Ameren Illinois Ex. 2.0 (Solari Dir.), p. 2:24-29 (estimating 18-24 months to implement revised Part 280); MEC Ex. 1.0 (Knight Dir.), pp. 35:780-36:783 (estimating a minimum of 18 to 24 months to complete system changes and stating MEC will not begin work on necessary system changes until the final Part 280 is adopted); Nicor Ex. 2.0 (Grove Dir.), pp. 8:164-9:188 (estimating 18-24 months to make all necessary system changes); Nicor Ex. 4.0 (Grove Reb.), p. 16:367-68 (stating "the exact scope of work required cannot be known until there is a final rule"); ComEd Ex. 1.0 (Walls Dir.), p. 16:333-37 (approximating ComEd will require 18 to 24 months after the revised Part 280 becomes final to implement necessary IT system changes and stating, "[b]ecause there is no certainty as to what the rules will finally require, work on any necessary system changes will not commence until those rule changes are final").) In sum, the record is *replete* with evidence justifying the utilities' decision to wait until a final revised rule is approved before beginning

system modifications. GCI's assertion to the contrary is misplaced.

Moreover, what GCI deem unjustified delay is in fact prudency on the part of the utilities. Although GCI claim "[k]nowledge of the *precise* revisions [is] not necessary to begin preparation for revised rules," (GCI Corr. Initial Br., p. 16 (emphasis in original)), they do not dispute it is not cost-effective for the utilities to begin system modifications which may ultimately prove superfluous dependent upon the Commission-approved revised Part 280. As Mr. Ruckman testified, it is neither cost-effective nor in IAWC's customers' best interest to modify one system while developing a new one to meet the requirements of the new rule. (Hearing Tr., p. 560:6-11. *See also* MEC Initial Br., p. 9 ("MidAmerican has not begun work on system changes. It is not cost effective for MidAmerican to do so until final rules are adopted.").) Indeed, the Commission may send its Staff and the intervening parties back to the drawing board regarding one or more of the provisions in Staff's Proposed Rule. (*Consider supra* Section 280.05, "Policy" (Many of the intervening utilities believe this proposed section violates Illinois law and improperly expands the Commission's statutory powers.).) GCI claim: "It appears that Illinois' utilities have not used the lead time of this prolonged proceeding to make their systems more modular to accommodate foreseeable changes or to begin high-level system design." (GCI Corr. Initial Br., p. 16.) Yet, as indicated above, such claim is belied by the fact that the evidence of record shows it would not be cost-effective to act before the final rule is known.

Moreover, GCI's accusation is simply wrong. As Mr. Ruckman testified at the hearing in response to cross-examination by GCI's counsel, IAWC *has* considered "high-level system design," (GCI Corr. Initial Br., p. 16), in light of Staff's Proposed Rule in its current form:

> [W]e don't know at this point in time what the final rule is, but we have Staff's rule from its surrebuttal testimony. And we're already

> looking at that and determining what are the requirements of the new system so that we can meet that.

(Hearing Tr., pp. 560:24-561:5.) Indeed, some utilities may require even *more* time. GCI acknowledges this. According to GCI witness Ms. Alexander, smaller water utilities should be exempt from certain requirements of Part 280 because they are not cost-effectively capable of complying at all, given their IT systems, personnel or financial resources. (Hearing Tr., pp. 291:14-292:9; 293:4-10.) She believes "[t]he economies of scale are quite different." (*Id.*, p. 292:3-4.) However, Ms. Alexander cannot say how she would determine which water utilities are capable of cost-effective compliance and which are not:

> Q. Because you have not performed any study requiring the cost-of-service on the proposed rules of the water utilities, you can't say exactly what size a water utility must be in order to be capable or not capable of meeting these requirements; is that correct?
>
> A. That is correct. I do not have any information on that. It would need someone with more familiarity than I have with an array of and type of water utilities that are municipal or publicly-owned, for example, or even privately-owned around the state, yes.

(*Id.*, p. 293:11-22.)

Section 280.20 Definitions

"Low Income Customer"

Response to Staff

For the reasons set forth in its Initial Brief and in the testimony filed by the Company in this proceeding, IAWC has continuously recommended that Staff's proposed definition of "low income customer" be revised to apply to gas and electric utility customers only, and not to water and sewer customers. (*See* IAWC Ex. FLR-1.0 (CORR.), p. 5: 100-02; IAWC Ex. FLR-3.1, p. 5; JPTO, pp. 11-13; IAWC Initial Br., pp. 13-21.) Notably, Staff's proposed definition of "low

income customer" status for gas and electric utility customers hinges upon receipt by those utilities of notification from a LIHEAP agency of a customer's eligibility to receive LIHEAP aid. (*See* JPTO, pp. 11-12.) In contrast, the determination of "low income customer" status for customers of water and sewer utilities—which do not, and cannot, participate in LIHEAP—hinges upon a determination made by those utilities of whether a particular customer's income status would entitle that customer to receive LIHEAP aid under the applicable law. (*See id*.) In its Initial Brief, IAWC set forth the extensive income verification process undertaken by a LIHEAP agency to evaluate a utility consumer's eligibility for LIHEAP aid. (*See* IAWC Initial Br., pp. 15-17 (*citing* data request responses submitted by LIRC witness Mr. Vondrasek, Executive Director for the South Austin Coalition Community Council, which operates a LIHEAP application intake site).) Put simply, water and sewer utilities are not LIHEAP agencies, and they are not equipped to verify the income information necessary for a LIHEAP agency's determination of a utility consumer's eligibility for LIHEAP aid. They should not be treated disparately from gas and electric utilities, which, as stated, need only rely on LIHEAP agencies' determinations of, and notifications regarding, consumers' LIHEAP eligibility.

In response to IAWC's concern in this regard, in its Initial Brief, Staff countered that its proposed definition of "low income customer" does not require water and sewer utilities to associate with LIHEAP agencies. (ICC Staff Initial Br., p. 11.) Staff argues, "[r]ather, with water and sewer utilities, the proposed rule *shifts the burden to the Low Income Customer to provide proof of LIHEAP qualification status*." (*Id*. (emphasis added).) That is IAWC's concern precisely. While the burden is shifted to the customer to provide that proof, it will nevertheless be incumbent on the utility to verify it. As stated, water and sewer utilities should not be required to serve as a LIHEAP application intake site, accept income information from

customers, and then not only verify that income information as accurate, but also determine whether it is sufficient to qualify the customer for LIHEAP aid under the applicable law.

Further, Staff's distinction in its proposed definition between water/sewer utilities and electric and gas utilities ignores a reasonable alternative approach. As proposed by Mt. Carmel Public Utility Co. ("MPCU") and Nicor, this approach would be to revise the definition to require that the definition of "low income customer" status hinges on a determination by, and receipt of notification from, a LIHEAP agency that a person has qualified to receive LIHEAP aid. (*See* JPTO, pp. 12, 13; IAWC Initial Br., pp. 20-21.) In other words, a water or sewer utility would not be required to treat a customer as a "low income customer" unless and until that customer, or a LIHEAP agency, has provided the water or sewer utility with a copy of the notification issued by the LIHEAP agency of that customer's eligibility to receive LIHEAP aid. Association with LIHEAP agencies in this respect would actually remedy IAWC's concerns, contrary to Staff's argument. (*See* ICC Staff Initial Br., p. 11.) It would also treat all Illinois utilities the same with respect to the determination of whether their customers are "low income customers" under the revised Part 280.

"Medical Necessity"

Despite the use of the term "medical necessity" in Staff's proposed Section 280.160 regarding Medical Certification, that term is not otherwise defined in Staff's Proposed Rule. As such, IAWC has proposed defining that term to require a correlation between the life-threatening nature of the medical condition at issue and discontinuance of the particular utility service. (*See* IAWC Ex. FLR-1.0 (CORR.), p. 12:274; IAWC Ex. 2.0, p. 12:256-59; IAWC Ex. FLR-3.1, p. 6; JPTO, p. 14; IAWC Initial Br., pp. 22, 50-51.) Although IAWC repeatedly submitted its proposal throughout the course of this proceeding, neither Staff nor any other intervening party

has addressed IAWC's proposal, either in testimony or briefing, or has otherwise objected to IAWC's proposal. Given this lack of opposition to IAWC's proposed definition of "medical necessity," that definition should be incorporated into the revised Part 280.

"Tampering"

IAWC also has repeatedly proposed revising the definition of "tampering" to encompass any unauthorized alteration to utility equipment or facilities which causes damage to that equipment or facilities. (*See* IAWC Ex. FLR-2.0, 13:288-94; IAWC Ex. FLR-3.1, pp. 6-7; JPTO, p. 16; IAWC Initial Br., p. 23.) As explained in IAWC's Initial Brief, in some instances, tampering does not involve theft of utility service, but rather unauthorized use of a utility's facilities which results in damage to those facilities for which the utility should be permitted to recover. (IAWC Initial Br., p. 23.) Given the definition of "tampering" as proposed by Staff fails to account for such instances, IAWC's proposed revision is appropriate. However, like IAWC's proposed new definition of "medical necessity" (*see supra* Section 280.20, "Medical Necessity"), neither Staff nor any other party to this proceeding has addressed IAWC's proposal in testimony or briefing, or otherwise objected to IAWC's proposal. In the absence of opposition to IAWC's appropriately proposed revision to the definition of "tampering," the same should be incorporated into the revised Part 280.

SUBPART B: APPLICATIONS FOR UTILITY SERVICE

Section 280.30 Application

Subsection 280.30(d)

Subsections 280.30(d)(1) and (2)

Response to Staff

Staff's proposed Section 280.30(d)(1) lists possible forms of identification which may be

required of an applicant for utility service. (*See* JPTO, pp. 20-21.) Subsection (d)(2) permits the applicant to chose which form(s) of identification he will provide the utility, and prohibits the utility from requiring one form over another. (*Id*., p. 24.) In its Initial Brief, Staff notes IAWC's and other utilities' concern that, as drafted, those Subsections might compel the utilities to accept inferior forms of identification. (ICC Staff Initial Br., p. 17.) However, Staff counters that qualifying language in Subsection (d)(2) requiring the forms of identification which an applicant submits to be "valid and accurate" alleviates the utilities' concern and protects them from accepting identification which cannot be verified as such. (*Id*.) Staff misstates IAWC's concern. IAWC's concern is not that the revised rule will require it to accept applicant identification which it has been unable to verify as accurate. Rather, IAWC's concern is that, as drafted, Staff's Proposed Rule will require IAWC to undertake the time-consuming and expensive *process* to verify as accurate certain forms of identification which, by their nature, are difficult to verify, *i.e.*, bank information (*see* JPTO, p. 20 (Section 280.30(d)(1)(H))). (IAWC Initial Br., p. 24.) Despite the outcome of that process, Staff's proposed Subsections 280.30(d)(1) and (d)(2) nevertheless would require IAWC to undertake it. The cost of such verification process ultimately would be borne by IAWC's ratepayers.

IAWC submits its proposed solution appropriately resolves this concern and protects ratepayers from unnecessary expense. Specifically, IAWC proposes to revise Subsection 280.30(d)(2) to permit the applicant to choose the first form of identification from the list in (d)(1) he or she will provide to the utility, and to permit the utility to designate which form of identification from the same list it will accept from the applicant as a second form of identification, in the event the utility requires a second form of identification from the applicant. (IAWC Ex. FLR-1.0 (CORR.), p. 6:121-33; IAWC Ex. FLR-3.1, p. 8; JPTO, p. 24; IAWC Initial

Br., pp. 24-25. *See also* Peoples Gas Light and Coke Co. and North Shore Gas Co. ("PGL/NS") Initial Br., pp. 9-10 (proposing same revision and noting agreement with IAWC in this regard).) IAWC submits that its approach strikes a reasonable balance between utility and consumer concerns.

Response to GCI

GCI propose revising Subsection (d)(1) to require a utility to inform, at the time of application, an applicant of all available forms of identification which may be submitted with an application for service. (*See* JPTO, p. 20.) In response to GCI's proposal, Staff notes its disagreement and aptly recognizes such a requirement is superfluous: "Staff does not agree that utilities should have to recite the entire menu of possibilities for every applicant. If an applicant willingly provides the first forms of identification that a utility seeks, then such a litany is unnecessary." (ICC Staff Initial Br., p. 16.) IAWC agrees with Staff.

Subsection 280.30(d)(4)

Response to Staff

Subsection 280.30(d)(4) requires an applicant to provide certain contact information at the applicant's option. (*See* JPTO, pp. 25-26.) Because IAWC must be able to communicate with its customers, IAWC proposes revising that language to require the applicant to provide their preferred method of contact from the utility, telephone number when available, e-mail address when available, and contact information for the property owner/manager when the premises at issue is rental property. (*See* IAWC Ex. FLR-1.0 (CORR.), pp. 5:112-6:120; IAWC Ex. FLR-3.1, pp. 8-9; JPTO, p. 26; IAWC Initial Br., p. 26.) Staff agrees "utilities need to be able to reach their customers." (ICC Staff Initial Br., p. 18.) Nevertheless, in response to IAWC's proposal, in briefing, Staff reiterates its concern that requiring an applicant to provide

such contact information might result in the rejection of applications from applicants who do not possess that contact information, *i.e.*, an e-mail address. (*Id*.) IAWC's proposal addresses Staff's concern. Again, if Subsection 280.30(d)(4) is revised to require an applicant to supply his contact information "*if available*," an application could not be rejected on the technicality feared by Staff. Moreover, it bears repeating that utilities do not seek to reject applications for service, especially on a technicality. (IAWC Initial Br., p. 27. *See also* Commonwealth Edison Co. ("ComEd") Initial Br., p. 10 (agreeing that such contact information should be provided if available and noting, "it is not ComEd's intention to deny service to someone who doesn't have a phone").)

Subsection 280.30(g)

Response to GCI

Proposed Subsection (g) requires utilities to provide applicants with the contact information for the Commission's Consumer Service Division in certain circumstances. (*See* JPTO, p. 28.) As discussed in IAWC's Initial Brief and the testimony it filed in this proceeding, IAWC already provides that information on its website, in its customer information packet, and on every bill and disconnect notice the Company issues. As such, Subsection (g) is duplicative and results in unnecessary costs to Illinois ratepayers; it should be deleted. (IAWC Ex. FLR-1.0 (CORR.), p. 6:134-39; IAWC Ex. FLR-3.1, p. 10; JPTO, p. 28.) In response to that proposal, GCI argue only that it "should not be given serious consideration." (GCI Corr. Initial Br., p. 33.) GCI do not state why IAWC's valid proposal does warrant consideration, or otherwise support their opposition. Accordingly, it is GCI's unsupported assertion that should be disregarded.

Subsection 280.30(j)

Response to AARP

Subsection 280.30(j) sets forth Staff's proposed timeline for connection of utility service. (*See* JPTO, pp. 29-30.) AARP argues that those timelines, as well as the corresponding timelines for reconnection of service in Section 280.170(b), *infra*, are too long. (AARP Initial Br., p. 4.) AARP calls for a 1-day period for connection and reconnection of water and sewer utility service. (*Id*.) Yet, AARP's proposal ignores the practicalities of connection and reconnection of those utilities. As explained more fully in IAWC's Initial Brief, while connecting or reconnecting water service within one day generally presents no issue, connecting or reconnecting sewer service within such a timeframe does. This is because sewer services do not have shut-off valves; connection and reconnection require a dig and unplugging of the sewer connection. Accordingly, connection and reconnection of sewer service is labor intensive and disruptive. (IAWC Initial Br., pp. 53-54; IAWC Ex. FLR-2.0, p. 13:275-84.) AARP's proposal does not address such issues, and it is impractical with respect to sewer utilities in particular. It should be rejected.

Subsection 280.30(k)

Response to Staff

IAWC proposes deleting Subsection 280.30(k) which requires utilities to collect, maintain and report information regarding applications taken and rejected, not only because the cost of this requirement outweighs any potential benefit as the number of rejected applications is minute, but also because Illinois utilities' definitions of a "rejected" application vary. Therefore, uniform reporting cannot be assured. (IAWC Initial Br., p. 28; IAWC Ex. FLR-3.1, p. 12; JPTO, p. 32; IAWC Ex. FLR-1.0 (CORR.), p. 7:140-44; IAWC Ex. FLR-2.0, p. 5:95-103; ICC Staff Ex. 2.0, pp. 25:568-26:584. *See also* MEC Initial Br., pp. 17-18 (highlighting inconsistencies in data due to operational differences among the utilities and arguing such inconsistencies will

render the data useless).) In defense of this requirement, Staff states it deems the application process a "source of significant dispute," and argues the data collection, maintenance and reporting requirements set forth in proposed Subsection 280.30(k) will deliver important information about the application process while not unreasonably burdening the utilities. (ICC Staff Initial Br., p. 21.) Yet, Staff concedes it is "cognizant of the expense associated with each new tracking requirement." (*Id*.) Further, Staff admits "the consumer complaint process already delivers robust monitoring capabilities to both Staff, utilities and consumer advocates." (*Id*.) Given Staff's concessions, it is unclear why a reporting requirement which will provide the Commission de minimis and inconsistent data—points which Staff does not dispute—is warranted. Subsection 280.30(k) should be deleted.

Response to GCI

Like their response to IAWC's proposal to delete proposed Subsection 280.30(j) (*see supra* Section 280.30(j)), GCI simply respond to IAWC's proposal to delete proposed Subsection 280.30(k) by stating the "proposal[] should not be given serious consideration." (GCI Corr. Initial Br., p. 33.) They offer nothing more. GCI's unsupported opposition can be disregarded.

SUBPART C: DEPOSITS

Section 280.40 Deposits

Subsection 280.40(i)

Subsections 280.40(i)(1) and (2)

Response to Staff

In response to IAWC's proposal to permit refunds to both small business and non-small business customers to be by credit to the customer's account (*see* JPTO, pp. 44-46), Staff states the Small Business Utility Deposit Relief Act ("Small Business Act"), 220 ILCS 35/4, requires

that refunds be by separate check. (ICC Staff Initial Br., p. 29.) Staff argues it is appropriate to apply that policy to all customers, while permitting refund by credit to the customer's account at the customer's request. (*Id*., pp. 29-30.) As discussed in its Initial Brief, IAWC agrees with Staff that refunds to small business customers should accord with the Small Business Act. (IAWC Initial Br., pp. 29-30.) However, IAWC reiterates that Staff's proposed language in Subsection 280.40(i)(1) may give rise to unintended inconsistencies with that Act in that it does not address certain other requirements of the Small Business Act, such as the exception to refund by direct check "where discontinuance of service is affected." (220 ILCS 35/4(c). *See also id*.) As set forth in its Initial Brief, IAWC continues to propose, to ensure no conflict between Part 280 and the Small Business Act, that Subsection 280.40(i)(1) read: "For a current small business customer, deposit refunds shall be made in accordance with the Small Business Utility Deposit Relief Act, 220 ILCS 35/4." (IAWC Initial Br., p. 30.)

IAWC further disagrees with Staff that it is appropriate to apply the refund by separate check requirement of the Small Business Act to customers other than those deemed "small business" customers under that statute. Staff has presented no evidence substantiating that claim. In contrast, IAWC presented evidence that it is more efficient and cost effective to issue a credit to a customer's account than to prepare and mail a check, and credit to a customer's account assures receipt of the returned funds. (IAWC Ex. FLR-1.0, p. 7:146-51; IAWC Ex. FLR-2.0, pp. 5:109-6:119.) Neither Staff nor any other party to this proceeding countered that evidence. As such, IAWC's proposed revision to Subsection 280.40(i)(2) to require refund by credit to the customer's account unless the customer requests refund by separate check should be incorporated into the revised Part 280. (IAWC Ex. FLR-2.0, pp. 5:104-6:119; IAWC Ex. FLR-3.1, p. 16; JPTO, pp. 44-46; IAWC Initial Br., pp. 30.)

Section 280.45 Deposits for Low Income Customers

Response to Staff

For the reasons set forth in its Initial Brief, IAWC proposes making this Section, as well as the other sections of Staff's Proposed Rule specifically applicable to "low income customers" (*see supra* Section 280.20, "Low Income Customer," and *infra* Sections 280.65 and 280.125), inapplicable to water and sewer utilities. (*See* IAWC Initial Br., pp. 13-21, 31, 35, 44.) In response to IAWC's proposal regarding Section 280.45, Staff simply reiterates its response to IAWC's proposal to revise the definition of "low income customer." (ICC Staff Initial Br., p. 31.) That response does not alleviate IAWC's concerns. (*See supra* Section 280.20, "Low Income Customer.")

SUBPART E: PAYMENT

Section 280.60 Payment

Subsection 280.60(d)

Subsection 280.60(d)(3)

Response to Staff

IAWC proposes revising Staff's proposed Subsection 280.60(d)(3) to permit the application of late fees to budget payment plans. (IAWC Ex. FLR-1.0 (CORR.), pp. 7:158-8:169; IAWC Ex. FLR-2.0, pp. 7:148-8:177; IAWC Ex. FLR-3.1, p. 23; JPTO, p. 62; IAWC Initial Br., pp. 34-35.) In defense of its proposed language, Staff argues first that the exclusion of late fees on budget payment plans already exists in the current Part 280. (ICC Staff Initial Br., p. 39.) Yet, Staff presents no evidence or argument as to why the presence of such exclusion justifies its retention. It does not.

Staff argues late fees on budget payment plans are unnecessary because utilities retain the

right to remove from such plans customers who fail to make timely payments. (*Id*., pp. 39-40.) However, late payment fees not only incentivize timely payments, but also alleviate the impact on utilities' cash working capital costs resulting from untimely payments, and are relied on by utilities as part of their cash flow. (IAWC Ex. FLR-1.0 (CORR.), p. 7:162-69; IAWC Ex. FLR-2.0, p. 8:162-76; IAWC Initial Br., p. 34.) As IAWC witness Mr. Ruckman testified at the hearing:

> Q. . . . When late payments negatively affect the utility's cash flow, can you explain how that negatively affects the utility's cost of service?
>
> A. Well, utility service is one of the few products or service that you pay for after receipt of that service. In most cases, at least 30 days beyond receipt of the service. So to the extent that we extend the amount of time the customers have to pay the bills, that simply delays the income of revenue that is necessary to pay the cost of service that is provided to the customers. So if we -- if we put in place practices that delay the payment of utility services, in its simplest form what happens is a customer's outstanding debt has to increase to pay for that service. The customers pay for that debt service cost, so that ultimately results in an increase in the cost of service. And I'll also point out that late payment fees are a means of income to the Company to help pay for that loss of cash flow . . . .

(Hearing Tr., pp. 580:5-581:1.) This concern applies to late budget payments as with any other payments.

Finally, Staff reiterates in briefing the alleged difficulty in ascertaining on which portion of a budget payment amount to assess a late fee—the budget payment amount or the total amount. (ICC Staff Initial Br., p. 40.) As stated in IAWC's Initial Brief, Staff's concern is easily resolved. (IAWC Initial Br., p. 35.) It is appropriate to apply the late fee to the budget payment amount, or the amount due on the bill at issue. (*Id*.; IAWC Ex. FLR-2.0, pp. 8:177-9:183.) Given that Staff's objections to IAWC's proposed revision to Subsection 280.60(d)(3)

are unsupported or easily remedied, IAWC's proposal should be accepted.

Section 280.60(e)

Clarification

IAWC does not oppose the deletion of Section 280.60(e), relating to partial payments, as set forth in the Staff Proposed Rule. (*See* IAWC Initial Br., p. 35. *See also* JPTO, p. 63 (Staff's proposed deletion of that Subsection).)

Section 280.65 Late Payment Fee Waiver for Low Income Customers

Response to Staff

Staff continues to support its originally proposed language in Section 280.65. (ICC Staff Initial Br., p. 41.) For the reasons set forth in its Initial Brief, IAWC proposes making this Section, as well as the other sections of Staff's Proposed Rule specifically applicable to "low income customers" (*see supra* Sections 280.20, "Low Income Customer" and 280.45 and *infra* Section 280.125), inapplicable to water and sewer utilities. (*See* IAWC Initial Br., pp. 13-21, 31, 35, 44.) Although it defended its position with respect to the other sections of Staff's Proposed Rule which are specifically applicable to "low income customers," Staff did not respond in briefing to IAWC's proposal regarding Section 280.65. IAWC's proposal should be adopted.

IAWC notes that both MEC and MCPU oppose the late payment fee waiver for low income customers. With respect to Staff's proposed exemption from late fees for low income customers, MEC argues that "[g]ranting a waiver of these charges only to low-income customers could be construed as granting a preference to these customers, while all other customers would incur late charges." (MEC Initial Br., p. 36.) Thus, because Staff has presented no testimony as to why that exemption does not violate Section 9-241 of the Act, there is no rational basis for the Commission to determine low income customers should be treated differently from other

customers in this respect. (*Id*.; 220 ILCS 5/9-241 (prohibiting preferences or discrimination with respect to utility rates or other charges).) As explained in IAWC's Initial Brief, Staff's "low income customer" provisions also improperly create a subclass of customers entitled to preferential treatment, and thus violates Section 1-102 of the Act mandating the provision of public utility services be "equitable to all citizens." (IAWC Initial Br., pp. 18-19. *See also* 220 ILCS 5/1-102.)

MCPU aptly identifies a "Catch-22" situation resulting from proposed Section 280.65. It notes that, in theory, removing the threat of late fees for low income customers *should* increase those customers' ability to pay (and thus reduce utilities' uncollectibles expense borne by all ratepayers). (MCPU Initial Br., pp. 6-7.) Yet, by removing late fees, the *incentive* to pay is removed. (*Id*., p. 7.) Thus, low income customers are no more likely to pay in the absence of the threat of late fees, and utilities are no more likely to reduce their uncollectibles. Nothing has been gained by the exemption provided in proposed Section 280.65. IAWC agrees with MCPU's analysis. Proposed Section 280.65 should be deleted.

Section 280.80 Budget Payment Plan

Subsection 280.80(i)

Response to Staff

Staff defends its proposed language in Subsection 280.80(i), which prohibits the assessment of late fees on budget payment plans, (*see* JPTO, p. 70), by referencing its arguments in defense of its proposed Subsection 280.60(d)(3) governing the same topic. (ICC Staff Initial Br., p. 44.) As discussed above, those arguments are without merit. (*See supra* Section 280.60(d)(3).)

SUBPART G: REFUNDS AND CREDITS

Section 280.110 Refunds and Credits

Subsection 280.110(d)

Response to Staff

In response to IAWC's and other utilities' concern that the language of Staff's proposed Subsection 280.110(d) will require utilities to pay interest on customer overpayments regardless of whether those overpayments are the result of utility error, Staff asserts "the simple way for a utility to avoid paying interest on most overpayments is by issuing timely refunds." (ICC Staff Initial Br., p. 49.) However, this proposed requirement would nevertheless result in monitoring by the utilities to ensure that overpayments are recognized as soon as they occur, and that they are immediately refunded once the utility confirms it has the actual money in hand. (IAWC Initial Br., p. 38.) Such heightened monitoring carries with it incremental costs to be borne by Illinois ratepayers. (IAWC FLR-2.0, p. 9:188-92.) Those increased costs are avoided by IAWC's simple proposal to revise Subsection 280.110(d) to limit the payment of interest to overpayments due to utility error. (*See* IAWC Ex. FLR-1.0 (CORR.), 8:179-83; IAWC FLR-2.0, p. 9:184-200; IAWC Ex. FLR-3.1, p. 31; JPTO, pp. 79-82; IAWC Initial Br., pp. 37-38.) Moreover, when it comes to "timely refunds," Staff's position on issuing refunds is wholly inconsistent. Staff opposes the making of refunds by credit to the customer's account, which would be more "timely," and instead advocates the slow process of refund by check. (*See supra* Subsection 280.40(i).)

Staff also argues that questions of intent will overcomplicate the concept. (ICC Staff Initial Br., p. 49.) IAWC disagrees. IAWC is not aware of interest payments made to customers for overpayments on any other type of consumer bill. (IAWC Ex. FLR-2.00, p. 9:192-200;

IAWC Initial Br., p 38.) Nor does IAWC see the difficulty in distinguishing an intentional overpayment made by a customer who pays in advance for the sake of convenience, for instance, prior to leaving for a long trip, and an unintentional overpayment which accords with an inadvertent utility billing error. With the exception of Staff, it appears nearly all, if not all, of the other parties to this proceeding are in agreement. (*See, e.g.*, PGL/NS Initial Br., pp. 34-35 (noting PGL/NS, AIC, ComEd, IAWC, MEC and GCI all believe interest on overpayments should be limited to those which are the fault of the utility).) IAWC's proposed revision should be adopted. In their Initial Brief, GCI confirm their agreement with IAWC in this regard. GCI propose Subsection 280.110(d) be revised "to make clear that interest on refunds and credits shall be applied only when a customer's overpayment is the result of the utility's billing error." (GCI Corr. Initial Br., p. 60.)

Subsections 280.110(f)

Subsection 280.110(f)(1)

Response to Staff

In its Initial Brief, Staff indicated its willingness to accept ComEd's proposed revision to Subsection 280.110(f)(1) to increase the percentage amount of a customer's credit balance that will trigger a direct refund from Staff's proposed > 25% of the customer's average monthly bill to ComEd's recommended > 125%, on the condition the utilities accept Staff's position regarding interest on overpayments in proposed Subsection 280.110(d), *supra*. (ICC Staff Initial Br., p. 50.) IAWC does not agree with Staff's proposal. As indicated with respect to Subsection 280.110(d) above, whether refunds are required at 25% or 125% of a customer's average monthly bill, monitoring would still be required to make "timely" repayments as Staff suggests. Further, Staff's proposal does not resolve IAWC's concern that it is more cost-effective and

efficient to make refunds by account credit rather than by check.

SUBPART H: PAYMENT ARRANGEMENTS

Section 280.120 Deferred Payment Arrangements (DPAs)

Subsection 280.120(a)

Response to Staff

IAWC recommends revising Subsection 280.120(a) to make DPAs applicable to all past due amounts, and not just past due amounts for utility service. (IAWC Ex. FLR-3.1, p. 32; JPTO, pp. 83-84; IAWC Initial Br., p. 39.) In its Initial Brief, Staff responds that it does not object to the establishment of concurrent payment agreements for "non-deniable" charges, or those charges for which lack of payment does not trigger disconnection. (ICC Staff Initial Br., p. 51.) However, Staff argues its proposed approach ensures customers are provided a fair opportunity to retire amounts owed for deniable charges, and avoids situations where a DPA can default by the nonpayment of non-deniable charges. (*Id*.) IAWC reiterates the Company currently includes all amounts owing in DPAs; permitting the Company to treat a DPA as in default only when amounts for utility service are unpaid would require extensive customization of IAWC's current billing software. (IAWC Ex. FLR-1.0 (CORR.), p. 9:198-201.) Therefore, IAWC continues to recommend that Subsection 280.120(a) be revised. IAWC notes that this is an example of a system change required under Staff's Proposed Rule which supports adoption of the proposed two-year compliance provision, to allow IAWC ample time to properly customize its current customer billing software and/or tailor new customer billing software in order to comply with the requirements of Subsection 280.120(a). (*See supra* New Section 280.15.)

Subsection 280.120(b)

Subsection 280.120(b)(1)(A)

Response to Staff

Staff rejects IAWC's proposal to delete language in Subsection 280.120(b)(1)(A) which would require a utility to consider a customer eligible for a new DPA at any time after that customer has brought their account current, whether or not the customer defaulted on a prior DPA. (ICC Staff Initial Br., p. 52. *See also* IAWC Ex. FLR-3.1, p. 33; JPTO, p. 85; IAWC Initial Br., pp. 39-40.) Although it "certainly agrees that the best case is one where the original DPA is followed to completion without any difficulties," Staff nevertheless argues that any customer behavior resulting in full payment without disconnection should be rewarded. (ICC Staff Initial Br., pp. 52-53.) IAWC disagrees. As stated in its Initial Brief, DPAs are special accommodations made to certain customers; implementing such arrangements and continuing to process those whose terms are not met increases the cost to all customers. (IAWC Initial Br., p. 41; IAWC Ex. FLR-1.0 (CORR.), p. 9:187-97.) As such, permitting consecutive DPAs despite default on their terms incentivizes noncompliance to the financial detriment of all ratepayers. Therefore, Subsection 280.120(b)(1)(A) should be eliminated.

Subsection 280.120(c)

Response to Staff

As with Subsection 280.120(a), IAWC proposes revising Subsection (c) to provide that DPAs shall include amounts owing for utility service, but need not *only* include those amounts. (IAWC Ex. FLR-1.0 (CORR.), p. 9:198-201; IAWC Ex. FLR-3.1, p. 33; JPTO, pp. 86-87; IAWC Initial Br., p. 41.) In response to that proposal, Staff referenced its arguments in opposition to IAWC's proposal with respect to Subsection 280.120(a). (ICC Staff Initial Br., p.

54.) IAWC reiterates its response above. (*See supra* Subsection 280.120(a).)

Subsection 280.120(d)

Response to Staff

IAWC proposes revising Subsection 280.120(d) to permit the utility, at its discretion, to either automatically transfer an existing DPA, or to cancel an existing DPA and establish a new DPA, in the event of a transfer of service. (IAWC Ex. FLR-3.1, p. 33; JPTO, p. 87; IAWC Initial Br., pp. 41-42.) In its Initial Brief, Staff noted it has no objection to IAWC's proposal, provided, when a new DPA is established, it has terms identical to the previous DPA. (ICC Staff Initial Br., p. 54.) Staff further argues proposed Subsection 280.120(d) as currently drafted provides the flexibility sought by IAWC because "nowhere does it prohibit a utility from offering a customer a new DPA that is identical to the old one. Indeed, the effect for the customer could be seamless and invisible if the utility simply made the changes internally, and the terms continued on as originally planned." (*Id.*) While IAWC does not disagree, it submits the better course would be to make explicit in the rule that the utility enjoys such flexibility. As such, IAWC's proposed revision should be incorporated into the revised Part 280.

Finally, Staff states it will not agree to any revision that would allow a utility to impose new DPA terms harsher than those existing at the time of transfer. (*Id.*, pp. 54-55.) That is not the intent of IAWC's proposed revision. Rather, IAWC simply recommends that utilities be permitted the discretion to associate new premises with DPA terms already existing in relation to a customer's prior premises either automatically or manually, whichever method corresponds to the utility's customer information and billing systems, to permit full compliance with revised Part 280. Accordingly, on this point, IAWC and Staff agree.

Subsection 280.120(e)

Subsection 280.120(e)(2)

Response to Staff

IAWC proposes deleting proposed Subsection 280.120(e)(2), regarding customer notification of a DPA which is defaulted and not reinstated prior to the next bill statement, because the incremental costs borne by all Illinois ratepayers from such a requirement outweighs the potential benefit to a few. (IAWC Ex. FLR-1.0 (CORR.), p. 10:214-48; IAWC Ex. FLR-3.1, pp. 33-34; JPTO, pp. 87-89; IAWC Initial Br., pp. 42-43.) Nevertheless, Staff continues to support that Subsection as originally proposed. (ICC Staff Initial Br., p. 56.) In response to IAWC's concern, Staff argues, "the expense associated with handling lengthy calls to customer service and field visits for disconnection far outweigh the expense of bill statements or mailings to explain the amount required to keep service going." (*Id*.) Yet, Staff provides no empirical evidentiary support for its claim that the notification required by proposed Subsection 280.120(e)(2) will reduce customer service calls or field visits for disconnection.

Staff further argues that having a clear statement of the amount required for reinstatement "should reduce confusion." (*Id*.) Yet, again, Staff provides no basis for its assertion that "confusion" regarding DPA default and reinstatement amounts exists, or that notification of the same "should" somehow reduce that alleged confusion. Rather, Staff simply points to testimony it filed in this proceeding which aptly recognizes that "reinstatement amount[s] should change . . . when the customer misses another payment and the next bill statement is issued." (Staff Ex. 2.0 (Agnew & Howard Reb.), p. 67:1540-42.) Given that reinstatement amounts are subject to change, IAWC submits that requiring utilities to issue notification of a defaulted DPA on the next bill statement or by separate written notice, which notification includes the amount required

to reinstate the DPA, actually could *increase* customer confusion and, as a result, customer service calls. (*See* JPTO, pp. 87-88.) IAWC's proposal to delete that notification requirement should be accepted.

Section 280.125 Deferred Payment Arrangements for Low Income Customers

Response to Staff

For the reasons set forth in its Initial Brief, IAWC proposes making this Section, as well as the other sections of Staff's Proposed Rule specifically applicable to "low income customers" (*see supra* Sections 280.20, "Low Income Customer," 280.45 and 280.65), inapplicable to water and sewer utilities. (*See* IAWC Initial Br., pp. 13-21, 31, 35, 44.) In response to IAWC's proposal regarding Section 280.125, Staff simply reiterates its response to IAWC's proposal to revise the definition of "low income customer." (ICC Staff Initial Br., p. 60.) That response does not alleviate IAWC's concerns. (*See supra* Section 280.20, "Low Income Customer.")

SUBPART I: DISCONNECTION

Section 280.130 Disconnection of Service

Subsection 280.130(c)

Subsection 280.130(c)(3)

Response to Staff

For the reasons set forth in its Initial Brief, IAWC proposes revising subsection (c)(3) to continue to prohibit disconnection of utility service related to charges for another type of service *unless* the charges are for water or sewer service and such utility services are provided by the same utility. (IAWC Initial Br., pp. 44-45; IAWC Ex. FLR-3.1, p. 38; JPTO, p. 98.) Staff agrees. In its Initial Brief, Staff states it "recognizes that a change will need to be made to its proposed language to reflect the unique condition of sewer service." (ICC Staff Initial Br., p.

62.) It further recognizes "that sewer service, with its entirely different characteristics from the other services the Commission regulates, presents a uniquely difficult (and perhaps from a public health standpoint, hazardous) challenged for disconnection." (*Id*., p. 63.) Accordingly, Staff recommends revising Subsection 280.130(c)(3) consistent with IAWC's proposal. (*Id*. *See also* IAWC Initial Br., pp. 44-45; IAWC Ex. FLR-3.1, p. 38; JPTO, p. 98.)

New Subsections 280.130(e) and 280.130(k)

AARP proposes new Subsection 280.130(e)(5) which would require a utility employee to make a reasonable effort to contact the customer or a responsible person on the premises prior to disconnection, and to announce the purpose of his presence, except where the safety of the employee is endangered. (JPTO, p. 101; AARP Ex. 2.0 (Rev.) (Musser Reb.), pp. 2-4.) Like AARP, GCI recommend adding a new subsection (k) to Section 280.130 which would require personal contact with a customer at the premises prior to disconnection. (JPTO, p. 106.) However, GCI's proposed language does not account for the safety of the utility employee. (*Id*.) For the reasons set forth in its Initial Brief and discussed below, IAWC opposes the proposed face-to-face requirement. (IAWC Initial Br., pp. 45-46, 47-48.)

Response to Staff

In response to AARP and GCI's proposals, in its Initial Brief, Staff agrees with those parties' contention that the current rule requires direct contact and that that requirement "*may* have provided customers with a legitimate opportunity to stop the disconnection at the last minute *if* utility field personnel were able to take payments." (ICC Staff Initial Br., p. 66 (emphasis added).) Nevertheless, Staff notes no utility currently engages in the practice. (*Id*.) Staff reiterates, "utilities and the unions representing their workers are far better judges of the risks or lack of risks involved with personal contact at the time of disconnection." (*Id*.) On this

point, IAWC and Staff are in agreement. As stated in IAWC's Initial Brief, face-to-face contact raises safety implications for utility employees in the field. (IAWC Initial Br., pp. 45, 46.) Accordingly, whether personal contact is desirable should be left to the utility's discretion. (IAWC Ex. FLR-2.0, pp. 10:217-11:229; IAWC Initial Br., pp. 46, 48.)

Response to AARP

AARP maintains in its Initial Brief that utility employees be required to make personal contact with a customer at the premises immediately prior to disconnection. (AARP Initial Br., pp. 5-8.) AARP argues the current Part 280 imposes such a requirement. (*Id*.) However, the presence of a requirement in the current rule, alone, is not a basis for its retention. AARP presents no argument to the contrary.

Next, AARP argues that it calls for face-to-face contact in the "hopes" of avoiding "tragedies." (*Id*., p. 6.) It references an unsubstantiated "story" related by GCI witness Ms. Alexander at the hearing of this matter regarding a winter disconnection in Michigan. (*Id*. (*citing* Hearing Tr., p. 277).) However, Ms. Alexander admitted Illinois law and the Commission's regulations prohibit winter disconnection. (Hearing Tr., pp. 277:17-278:1.) Nevertheless, AARP seizes upon Ms. Alexander's recitation to bolster its claim that a face-to-face contact requirement is warranted in Illinois. (AARP Initial Br., p. 6.) AARP has proffered no evidence to support its assertions. Simply put, a single, speculative anecdote cannot serve as the basis for the Commission's final order in this proceeding or the revisions to Part 280. Ms. Alexander's "story" and AARP's reliance on it should be ignored. In any event, despite the unsubstantiated story she related on the record, Ms. Alexander admitted, "[y]ou can't guarantee with a knock of the door that all things will be made right." (Hearing Tr., p. 278:13-14.) Her anecdote is of no consequence.

Section 280.140 Disconnection for Lack of Access to Multi-Meter Premises

Response to GCI

Staff's proposed Section 280.140 permits disconnection of a multi-meter premises for customers' failure to permit a utility access to its facilities in certain circumstances. (*See* JPTO, pp. 114-16.) Only GCI, and, in particular, the City of Chicago, oppose inclusion of this Section in the revised Part 280. (*Id.*, p. 116.) In defense of its proposed rule, Staff notes utilities have this power of disconnection under the current rule if their inability to gain access results in four estimated bills. (ICC Staff Initial Br., p. 69.) Staff recognizes that, with the advent of remote meter reading, utilities may not be able to gain access for necessary purposes (such as safety inspections or facility repair), but that lack of access may not result in estimated bills. (*Id*.) Accordingly, Staff argues, utilities must be able to disconnect service, or threaten disconnection, in order to gain access. (*Id*.) Staff also points out that its "proposal would implement new protections, such as field visits, notification and record keeping requirements, that the current rule lacks." (*Id*.) GCI ignore these proposed additional protections.

IAWC agrees with Staff. As stated in IAWC's Initial Brief, with respect to water and sewer utility service, the absence of the threat of disconnection to multi-meter premises incentivizes tenants in buildings with one shut-off valve to not pay their utility bills as long as one tenant pays. However, all ratepayers absorb the costs of unpaid bills. As such, utilities have an obligation to the entire body of their ratepayers to limit uncollectibles. The only realistic enforcement mechanism for this is disconnection of service or the threat of disconnection. This applies with equal force to multi-meter premises. (IAWC Initial Br., p. 49; IAWC Ex. FLR-2.0, p. 11:230-47.)

GCI claim building disconnections for debt collection purposes differ in nature than

disconnections for safety-related inspections or the inability to gain access to meters. (GCI Corr. Initial Br., p. 70.) Yet, despite asserting that distinction, GCI continue to recommend deletion of Section 280.140 in its *entirety*. Given that GCI apparently agree multi-meter premises disconnections related to access for regulatory purposes and meter readings are appropriate, their proposed wholesale deletion of Section 280.140 should be rejected.

Further, in defense of their proposal, GCI argue Staff's support for its proposed Section "focuses on the limits on what utilities can do to gain access. But those circumstances are attributable mainly to system design decisions (inside meters) regarding which their customers had no input." (GCI Initial Br., p. 70.) Instead, GCI argue "[i]t is obvious, notwithstanding any inconvenient configurations, *the utility decided to install meters for the new tenant-customers in locations that it now complains it cannot access or in locations for which it did not assure access*." (*Id*. (emphasis added).) That is incorrect. As IAWC's own tariffs make clear, customers *do* have input regarding the location of utility meters: they may have the option to install a single, or "master," meter or to install individual meters for the various tenants of their building. Moreover, customers can request that their meter or meters be installed outside, if the meters can be properly protected from the elements. However, the customer also has an obligation to ensure access. (*See* ILL. C.C. No. 23, Original Sheet No. 9, Section 10(D) (IAWC's Rules, Regulations and Conditions of Water Service) (providing the owner or customer shall choose an appropriate location for meter installation and "[t]he meter shall be located for easy accessibility for installation, maintenance, reading and disconnection"); *id*. Section 10(G) (providing in part, "[i]f the Customer requests a specific location for installation of the meter box or vault, the Company will comply with that request if feasible under proper utility standards").)[2]

[2] *Available at* www.amwater.com/ilaw/customer-service/rates-information.html (last accessed Sept. 27, 2011).

Thus, despite GCI's assertion, customers *do* have input into the location of their meters. Utilities, and water and sewer utilities in particular, however, may not have had input into building changes that affect meter locations. This would be particularly true where utilities that acquire other utilities had no input into the meter locations of the acquired utility. Further, utilities may lack any input into how buildings are used or subdivided by current owners and tenants. (IAWC Ex. FLR-2.0, p. 11:233-35; IAWC Initial Br., pp. 48-49.) As Mr. Ruckman testified, older buildings may be historic and, as such, renovations of those buildings must comply with specific criteria to preserve the historic designation. (IAWC Ex. FLR-2.0, p. 11:235-37.) Moreover, some multi-meter premises were not originally designed to house multiple tenants, but are later retrofitted for that purpose. (*Id*., p. 11: 237-39.) In these circumstances, while the water and sewer utilities may have installed the original shut-off valve, they have no control over later subdivisions or renovations resulting in a multi-meter premises with only one shut-off valve. The same is true with respect to older strip malls; when original tenants vacate the premises, the facilities are reconfigured for new tenants. (*Id*., p. 11:238-40.) In such situations, absent Section 280.140 as proposed by Staff, only one tenant need pay to prevent the water or sewer utility from being able to disconnect service or threaten disconnection in order to collect funds due.

GCI's proposal does not take into account these considerations. (IAWC Initial Br., pp. 48-49.) GCI simply accuse IAWC of assuming a "shift of responsibility tack [sic]." (GCI Corr. Initial Br., p. 75.) But GCI have ignored the record evidence cited above that water and sewer utilities are not, in fact, able to fully control where meters are installed. Staff's proposed Section 280.140 should be incorporated, in its entirety, into the revised Part 280.

SUBPART J: MEDICAL CERTIFICATION

Section 280.160 Medical Certification

Subsection 280.160(a)

Response to Staff

Staff's proposed Subsection 280.160(a) employs, but does not define, the term "medical necessity." (*See* JPTO, p. 117.) That term is not otherwise defined in Staff's Proposed Rule. (*See* JPTO, pp. 8-18 (Section 280.20, "Definitions").) IAWC believes that term is vague and should be defined in order to limit use of medical certifications to those instances where disconnection of the utility service could be life-threatening, and to provide more guidance to medical professionals issuing medical certifications. (IAWC Ex. FLR-1.0 (CORR.), p. 12:274; IAWC Ex. FLR-2.0, pp. 12:256-13:274; IAWC Initial Br., pp. 22, 50-51.) As such, IAWC proposes a definition of "medical necessity" which requires a correlation between the life-threatening nature of the medical condition at issue and discontinuance of the particular utility service. (IAWC Ex. FLR-1.0 (CORR.), p. 12:274; IAWC Ex. 2.0, p. 12:256-59; IAWC Ex. FLR-3.1, p. 6; JPTO, p. 14; IAWC Initial Br., p. 22.) As discussed above (*see supra* Section 280.20, "Medical Necessity"), although IAWC repeatedly submitted this proposal throughout the course of this proceeding, neither Staff nor any other intervening party has addressed IAWC's proposal, either in testimony or in briefing, or otherwise objected to it. Given that lack of opposition, "medical necessity" should be defined as proposed by IAWC and incorporated into the revised Part 280.

Subsection 280.160(h)

Response to Staff

IAWC proposes revising Subsection 280.160(h) to permit medical payment arrangements

("MPAs") to function as DPAs because payment arrangements as a result of medical certifications are no different than other types of payment arrangements. (IAWC Ex. FLR-1.0 (CORR.), p. 12:266-70; IAWC Ex. FLR-3.1, pp. 49-50; JPTO, pp. 124-25; IAWC Initial Br., pp. 21-22, 49-50, 51-52.) (IAWC also proposed revising language in Subsection 280.160(a) for this reason. (*See* IAWC Ex. FLR-3.1, p. 48; JPTO, p. 117; IAWC Initial Br., pp. 49-50).) Earlier in this proceeding, Staff did "not object to this change in general." (ICC Staff Ex. 2.0, p. 84:1921.) However, in its Initial Brief, in response to IAWC's and other utilities' proposal to permit MPAs to function as DPAs, and to correspondingly allow more flexibility in such arrangements, Staff simply asserts it "believes the process needs greater structure than the current rule's language provides." (ICC Staff Initial Br., p. 73.) It provides nothing more. Absent further explanation as to why Staff's position has changed and why the process governing DPAs set forth in proposed Section 280.120 does not provide the "greater structure" it seeks, Staff's outright dismissal of IAWC's proposal should be accorded no weight. Put simply, there is no reason to distinguish *types* of payment arrangements under the revised Part 280. Rather, it is important that the rules provide for the establishment of payment arrangements, while permitting utilities and their customers flexibility in fashioning arrangements which best suit the needs of both parties.

Subsection 280.160(i)

Response to Staff

In response to IAWC's concern that proposed Subsection 280.160(i) will allow for chronic recertification of medical certification when customers have not paid off balances from previous certificates, (IAWC Ex. FLR-1.0 (CORR.), p. 12:271-73; IAWC Initial Br., p. 52), Staff argues its proposal simply codifies "a longstanding, but unwritten practice" to allow customers to

use a new medical certificate after a period of 12 months has elapsed since the use of a previous medical certificate. (ICC Staff Initial Br., p. 73.) Indeed, Staff acknowledges "this practice has the potential to support chronic payment delinquency . . . ." (*Id.*) Yet, it defends its proposal against IAWC's and other utilities' concern by noting its agreement with GCI, who argue that the "unwritten policy" protects "vulnerable populations with chronic illness . . . ." (*Id.*, pp. 73-74 (*citing* GCI Ex. 4.0 (incorrectly cited as GCI Ex. 3.0) (Marcelin-Reme Reb.), p. 8:180-87).) Staff cites to the testimony of GCI witness Ms. Marcelin-Reme, who simply claims, because "most utilities allow for yearly recertification, and given how important such certification is to protecting vulnerable populations," annual recertification is appropriate. (GCI Ex. 4.0, p. 8:185-86.) Ms. Marcelin-Reme provides nothing to support the assertions on which GCI, and now Staff, rely. Ms. Marcelin-Reme did not reference vulnerable populations "with chronic illnesses," nor did she or Staff define such population or indicate how many customers it includes. Respectfully, individuals with chronic illnesses are distinguishable from those for whom the uninterrupted service of a particular utility is "medically necessary" as a result of a "medical emergency." (*See* JPTO, pp. 117, 119 (Subsections 280.160(a) and (d)(4)).) Allowing for annual recertification to protect this undefined population overlooks the purpose of the rule governing medical certifications—to temporarily prohibit disconnection in the event of a "medical emergency." (*See id.*)

SUBPART K: RECONNECTION

Section 280.170 Timely Reconnection of Service

Subsection 280.170(b)

Subsection 280.170(b)(3)

Response to GCI

GCI oppose Staff's proposed 4-day timeline for reconnection of water and sewer utility service provided for in Subsection 280.170(b)(3) as unnecessarily long. (GCI Corr. Initial Br., p. 84; JPTO, p. 133.) Instead, GCI recommend that utilities be required to reconnect service within 48 hours after the customer has remedied the cause for disconnection, with an option for reconnection within 24 hours at a fee. (GCI Corr. Initial Br., pp. 85-86.) In support of their proposal, GCI address at length regulations governing reconnection periods in other states. (*Id*. pp. 85-88). Inexplicably, from this, they ultimately conclude "the evidence suggests that the new rule would provide an incentive for electric, water and gas utilities to slow down the reconnection process as compared to the current practice, and not maintain an employee complement sufficient to provide essential utility service." (*Id*., p. 89.) GCI do not cite to the evidence that supports this claim. Rather, by GCI's own admission, the opposite is true. Indeed, GCI admit that "most utilities complete service orders and restoration of service within much shorter timeframes . . . ." (*Id*., p. 85.) GCI can point to no evidence, and, indeed do not even attempt to argue, that utilities aspire to slow down reconnection times and accordingly forego revenues.

Moreover, GCI admit, in arguing nothing precludes utilities from hiring the staff necessary to perform reconnections, that "[c]ertainly, no party has suggested that the expense associated with these additional hires, if needed, would not be recovered in future rate cases." (*Id*., p. 87. *See also* Hearing Tr., p. 241:20-22 (GCI witness Ms. Alexander testifying, "I acknowledge the notion that there are costs involved in insuring reconnection of service within a reasonable period of time . . . ").) Given this admission, it is unclear why GCI believes Staff's proposed 4-day timeline would somehow incentivize utilities to "not maintain an employee complement sufficient to provide essential utility service." (GCI Corr. Initial Br., p. 89.) In light

of GCI's concessions, its proposed reduced reconnection timeline cannot be accorded weight.

In addition, like AARP's call for a 1-day timeline for connection and reconnection of service (*see supra* Subsection 280.30(j)), GCI's 48-hour proposal ignores the practicalities of connection and reconnection of water and sewer utilities. As explained above, connection and reconnection of sewer service require a dig and unplugging of the sewer connection. Accordingly, connection and reconnection of sewer service is labor intensive and disruptive. (IAWC Initial Br., pp. 53-54; IAWC Ex. FLR-2.0, p. 13:275-84.) Thus, it is not reasonable to require water and sewer utilities to reconnect service within 1 day; Staff's proposed 4-day period is more appropriate. GCI's proposal is impractical and it should be rejected.

SUBPART L: UNAUTHORIZED SERVICE USAGE

Section 280.200 Tampering

Subsections 280.200(a), (b) and (f)

Throughout the course of this proceeding, IAWC has repeatedly proposed that Staff's proposed definition of "tampering" and Section 280.200 governing the same be revised to encompass unauthorized alterations of utility equipment or facilities which damage that equipment or facilities. (*See supra* Section 280.20, "Tampering." *See also* IAWC Ex. FLR-2.0, 13:285-94; IAWC Ex. FLR-3.1, pp. 6-7, 56-57; JPTO, pp. 16, 141-43; IAWC Initial Br., pp. 23, 54-55.) Neither Staff nor any other party to this proceeding has addressed IAWC's proposal in testimony or in briefing, or has otherwise objected to IAWC's proposal in this regard. IAWC's proposed revisions to Section 280.200 are unopposed. They should be incorporated into the revised Part 280.

Section 280.210 Payment Avoidance by Location (PAL)

Response to GCI

GCI oppose in its entirety Section 280.210 as proposed by Staff in surrebuttal for several reasons. (GCI Initial Br., pp. 91-93; JPTO, pp. 143-48.) First, GCI defend their opposition by attempting to explain why they did not object to Staff's PAL rule as originally proposed:

> While GCI did not object to Staff's original proposal, which was narrowly crafted and intended to apply only to situations of payment avoidance that have been well documented by the utility, Staff's revised position imposes significant deposit hurdles on applicants who, in fact, owe no outstanding amounts to the utility.

(GCI Initial Br., p. 91.) This statement is remarkable in light of a comparison of Section 280.210 as originally proposed by Staff and as revised by Staff on surrebuttal. (*See* ICC Staff Ex. 3.0, Attachment A, pp. 57-60 (setting forth differences between Staff's Rebuttal and Surrebuttal versions of Section 280.210).) Not only did Staff revise its PAL rule to make explicit and *more narrowly* define the conditions which must exist before a utility may suspect PAL (*id*., p. 57 (new subsection (b)), but also the revised section contains the *same* notification requirements which a utility must meet in order to give a customer an opportunity to respond to a PAL allegation (*id*., p. 58 (new subsection (d), former subsection (c))). Further, Staff's revised PAL rule now requires a utility to have "proof" of a PAL before assessing a penalty, but maintains that it is the utility's burden to demonstrate PAL is occurring. (*Id*., pp. 59-60 (subsections (e) and (f)).) Finally, although GCI claim Staff's revisions now impose "significant deposit hurdles," the PAL rule as initially proposed permitted the utility not only to assess a deposit, but also to deny service outright as a protection from PAL. (*Id*., pp. 58-59 (former subsection (d)).) It is unclear why GCI now oppose a version of the PAL rule that has become more lenient towards applicants for service.

GCI next argue Staff's proposed Section 280.210 should be rejected as inconsistent with fundamental contract law. (GCI Corr. Initial Br., p. 91.) GCI assert the intervening utilities' support of the PAL section "is rooted in [their] persistent allegation that seeking service at a location where service was previously provided to an individual who owes an outstanding debt, whether related or not, is fraudulent." (*Id*., p. 92.) GCI then go on to argue why utilities must, but are unable to, prove the elements of common law fraud necessary to void a contract and hold an applicant liable for the breach of contract of another customer. (*Id*., pp. 92-93.)

GCI's argument is flawed, as it lacks an explanation of why common law contract principles are even applicable here. To begin with, it is within the Commission's power under the Act to enact rules which override common law contract fraud principles. *See Sheffler v. Commonwealth Edison Co.*, No. 110166, 2011 Ill. LEXIS 1099, **24-25 (June 16, 2011) ("[T]he legislature has given the Commission broad powers, so that the Commission on its own initiative can promulgate orders, rules or regulations fixing adequate service standards and requiring adequate facilities."). Moreover, under well-established Illinois law, it is the tariff, not common law contract principles, that governs the relationship between utilities and their customers. *Id*., *16 ("[W]hen a tariff is duly filed with the Commission, the tariff binds the utility and the customer, and governs their relationship."); *J. Meyer & Co., Inc. v. Ill. Bell Tele. Co.*, 88 Ill. App. 3d 53, 56 (2d Dist. 1980) (holding "the tariff is the sole source of any duty owed by defendant [utility]"). Thus, "Illinois courts have long held that a tariff . . . . provides the source for, and determines the nature and extent of, a public utility's service obligations to its customers." *Adams v. N. Ill. Gas Co.*, 211 Ill. 2d 32, 57-58 (2004). *See also In re Ill. Bell Switching Station Litig.*, 161 Ill. 2d 233, 248 (1994) (J. Miller, concurring). As such, they have dismissed breach of contract claims as barred by utility tariffs, in the absence of any separate

contract between the parties. *See, e.g.*, *Sheffler*, 2011 Ill. LEXIS 1099, *19 (holding tariff barred plaintiffs' claim of breach of contract implied in law or fact); *J. Meyer & Co., Inc.*, 88 Ill. App. 3d at 57-58 (despite tariff, affirming dismissal of plaintiff's breach of contract claim as plaintiff failed to sufficiently allege the existence of any contract); *Sarelas v. Ill. Bell Tele. Co.*, 42 Ill. App. 2d 372, 375 (1st Dist. 1963) ("[T]he extent to which defendants owed plaintiff 'a legal duty' is determined by the particular provisions of the tariff on file with the commission; there is no contract in this case on which plaintiffs can rely."). Because tariffs govern the relationship between utilities and their customers, GCI's lengthy recitation of the common law elements of fraud necessary to prove a breach of contract is misplaced.

Finally, GCI argue Staff's proposed PAL rule is inappropriate because utilities may employ other debt collection procedures to collect the funds due them. (GCI Corr. Initial Br., p. 93.) In so asserting, GCI ignore that all ratepayers absorb the costs of unpaid bills and, as such, utilities have an obligation to the entire body of their ratepayers to limit their uncollectibles. (IAWC Ex. FLR-2.0, p. 11:243-45.) GCI acknowledge gas and electric utilities, *but not water and sewer utilities*, can collect abnormal uncollectibles through uncollectibles riders pursuant to Illinois law. (GCI Corr. Initial Br., p. 93. *See also* Hearing Tr., p. 294:8-15 (GCI witness Ms. Alexander acknowledging Illinois' uncollectibles riders law does not apply to water utilities).) Thus, GCI's argument in this regard, particularly as it relates to water and sewer utilities, which GCI admit are not subject to Illinois' uncollectible riders statute, should be disregarded.

SUBPART N: INFORMATION

Section 280.240 Public Notice of Commission Rules

Response to Staff

Section 280.240 as initially proposed by Staff requires annual mailing of Appendix C.

(JPTO, p. 155.) However, in response to IAWC's and other utilities' concern that requirement was not cost-effective, Staff has agreed to a revision which would allow the utilities flexibility regarding the means by which the annual notice is made. (ICC Staff Initial Br., pp. 79-80.) Specifically, Staff accepts Ameren's proposal to add the following language to the end of proposed Section 280.40: "Such notice to customers may be in the form of a bill message where customers will be provided the opportunity to obtain copies of the Commission's rules upon request or by accessing the utility's website." (*Id*., p. 79; Ameren Ex. 4.1, p. 65.) This revision substantially aligns with IAWC's proposed revision to Section 280.40. (*See* FLR-3.1, pp. 65-66; JPTO, p. 155.) IAWC agrees with Staff's change.

IV. CONCLUSION

IAWC respectfully submits that the Commission approve its proposed revisions to Staff's Proposed Rule, as set forth in the testimony and exhibits filed by the Company in this proceeding and as further discussed in IAWC's Initial Brief and above, and that the Commission incorporate those proposed revisions into the final revised Part 280 which the Commission promulgates as a result of the instant proceeding.

Dated: October 7, 2011

Respectfully submitted,

ILLINOIS-AMERICAN WATER COMPANY

By: */s/ Anne M. Zehr*

One of its attorneys

Albert D. Sturtevant
Anne M. Zehr
CARPENTER LIPPS & LELAND LLP
22 West Washington Street, Suite 1500
Chicago, Illinois 60602
Telephone: (312) 854-8032
Facsimile: (614) 365-9145
sturtevant@carpenterlipps.com
zehr@carpenterlipps.com

CERTIFICATE OF SERVICE

I, Anne M. Zehr, an attorney, certify that on October 7, 2011, I served a copy of the foregoing Reply Brief of Illinois-American Water Company by electronic mail to the individuals on the Commission's Service List for Docket 06-0703.

/s/ Anne M. Zehr
Anne M. Zehr